

MINUTES  
LAWTON CITY COUNCIL REGULAR MEETING  
JANUARY 8, 2013 – 6:00 P.M.  
NEW CITY HALL  
COUNCIL CHAMBERS/AUDITORIUM

Mayor Fred L. Fitch  
Presiding

Also Present:  
Bryan Long, Acting City Manager  
Frank V. Jensen, City Attorney  
Traci Hushbeck, City Clerk  
COL Paul Hossenlopp, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Sam Moyd, Zoe Christian Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bill Shoemate, Ward One  
Michael Tennis, Ward Two  
Rosemary Bellino-Hall, Ward Three  
Jay Burk, Ward Four  
George Moses, Ward Five  
Stanley Haywood, Ward Seven  
Doug Wells, Ward Eight

ABSENT:

Richard Zarle, Ward Six

AUDIENCE PARTICIPATION:

Dr. Juan Lopez and Dr. Todd Bridges briefed the council on the Mission of Mercy event to be held in Lawton on February 1-2, 2013. They requested \$35,000 in funding from the City of Lawton.

Mayor Fitch stated that this item is not on the agenda and no action can be taken. He stated no funds are available. He requested Dr. Bridges and Dr. Lopez set up an appointment with him to discuss this issue.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR  
MEETING OF NOVEMBER 20, 2012.

MOVED by Tennis SECOND by Moses to approve the minutes of November 20, 2012. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: None. MOTION CARRIED.

CONSENT AGENDA

Wells requested item #2 be considered separately.

MOVED by Burk SECOND by Moses to approve the consent agenda with the exception of item #2. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Southwestern Bell Telephone dba AT&T Oklahoma in the amount of \$2,357.83 (**Res. 13-01**), Roy Timmons in the amount of \$1,200.00 (**Res. 13-02**) and Melissa and Richard Washburn in the amount of \$490.53 (**Res. 13-03**). Exhibits: Legal Opinions/Recommendations, Resolution No. 13-\_\_\_\_, Resolution No. 13-\_\_\_\_ and Resolution No. 13-\_\_\_\_.
2. Consider the following damage claim recommended for denial: RCS Enterprises, LLC in the amount of \$4,416.71. Exhibits: Legal Opinions/Recommendation.

Wells stated after reading the background on this claim he understands the rationale of the city attorney, but on the 26<sup>th</sup> we were called and crews flushed the sewer line and got water running again and reported the problem solved. You have a business here and two days later their sewer line is all backed up again and they have to shut down their business. They were told it was not the city's fault so they hired a private plumber to come in and then they find out the city main had collapsed. He would think that would be reasonable to have done that since they were assured it was not the city main. He feels they should pay this claim.

MOVED by Wells SECOND by Shoemate to approve the damage claim of RCS Enterprises, LLC in the amount of \$4,416.71 (**Res. 13-04**). AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: None. MOTION CARRIED.

3. Consider adopting a resolution approving payment on the judgment in the Workers' Compensation case of Evelyn Caro in the Workers' Compensation Court, Case No. 2011-01880R. Exhibits: **Resolution 13-05**.
4. Consider approving the first amendment for the operation agreement for the Holiday in the Park, "Holiday House" to include approving the first option of five (5) years extension of the operations agreement. Exhibits: First Amendment to the Holiday House Operation Agreement and Holiday in the Park Committee Letter of Request.
5. Consider accepting State Aid for Libraries Grant of \$55,647.00 from the Oklahoma Department of Libraries for FY2012-2013. Exhibits: Agreement for 2013 State Aid Recipients; Oklahoma Department of Libraries Rules and Regulations for State and Grants to Public Libraries.
6. Consider approving plans and specifications for the South Wolf Creek #1 Siphon Project and authorizing staff to advertise for bids. Exhibits: Plans and specifications are on file in the Public Works Administration office.

7. Consider approving the Contribution-In-Aid-Of-Construction (CIAC) Agreement with the AEP-PSO and adopting Street Light Resolution No. 480 to install a 35 foot wood pole, one 250 Watt High Pressure Sodium (HPS) Cobra Head Street Light and wiring on the north side of NW Cache Road at the 'T'-intersection of NW Cache Rd and NW St. James Place; and approve funding from Council Contingency. Exhibits: Contribution-In-Aid-of-Construction Agreement with AEP-PSO, Street Light Resolution No. 480 and Letter dated December 11, 2012 from the Dayspring Church.
8. Consider extending contract (CL12-024) Patching Material with Quadex, Inc. of North Little Rock, AR. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
9. Consider awarding contract (CL13-019) Electro Fusion Polyethylene Fittings to Water Products of Owasso, OK. Exhibits: Department recommendation, abstract of bids, price sheet.
10. Consider approving appointments to boards and commissions. Exhibits: None.
11. Consider approval of payroll for the period of December 24, 2012 – January 6, 2013.

NEW BUSINESS ITEMS:

12. Hold a public hearing and consider an ordinance changing the zoning from R-2 (Two-Family Dwelling District) to R-1 (Single-Family Dwelling District) with an HP (Historical Preservation Overlay District) zoning classification located at 101 NW Fort Sill Boulevard. Exhibits: Ordinance No. 13-\_\_, Location Map, Application, HPC Minutes and CPC Minutes.

Richard Rogalski, Community Services Director, stated this is the first of three items for designation for historic preservation overlay zones. All three properties are on Fort Sill Boulevard and the applicants are the owners of the properties. This request is for Lots 7 and 8, Block 55, North Addition. The property owners, George and Teresa Moses, are requesting the lots be rezoned to R-1 with an HP Overlay District. On November 7, 2012, the Historical Preservation Commission (HPC) held a public hearing on the request for HP Overlay District. Section 18-10-1-1012 of the Lawton City Code lists the criteria for designation within three categories: Historical/Cultural, Architectural/Engineering, and Archeological. The letter of basis for designation included in the application addresses how this request meets the criteria of Historical/Cultural and Architectural/Engineering. The HPC recommended approval of the HP Overlay District on these lots. On December 13, 2012, the City Planning Commission (CPC) held a public hearing on the request for rezoning to R-1 and the HP Overlay District. During the public hearing the applicant spoke in favor of the request, and no one spoke against the request. There would be no change in use, traffic, or infrastructure requirement. A binding site plan is not required for this request. The CPC, by a vote of 9 – 0, recommended approval of the rezoning and HP Overlay District. Notice of public hearing was mailed on December 18, 2012 to 51 property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on December 21, 2012.

Moses stated because he is the owner of the property and the action is related in an intimate way to the next two agenda items, he will abstain from voting and discussion.

Shoemate stated Fort Sill Boulevard is 25 years past due to be widened. In the past they have faced opposition from the homeowners because of the trees and closeness of fences to Fort Sill Boulevard. He stated this is a bottleneck there and they have gone all these years needing to widen the street. He is concerned that if this works, like it did in Morford Hills, they will not be able to make any changes.

Rogalski stated this isn't the kind of historic preservation that prohibits the owner or the city from doing anything. It is a set of guidelines on how you deal with the home. It would not deter the city from any ability to get additional right of ways. He stated he felt they could widen the road without even taking the right of way if needed.

Shoemate stated the fence looked very close to the street and he did not want to do something where they could not make any changes.

Rogalski stated if things had to be moved, they would have to put everything back exactly the way it was.

Wells clarified that if the city needed to widen Fort Sill Boulevard, they could.

Rogalski stated yes.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Haywood, SECOND by Shoemate to adopt **Ordinance 13-01**, waive the reading of the ordinance, read the title only. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Haywood, Wells. NAY: None. ABSTAIN: Moses. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-01

An ordinance changing the zoning classification from the existing classification of R-2 (two-family dwelling district) to R-1 (single-family dwelling district) with hp (historical preservation overlay district) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; authorizing changes to be made upon the official zoning map in accordance with this ordinance.

13. Hold a public hearing and consider an ordinance changing the zoning from R-4 (High Density Apartment District) to R-2 (Two-Family Dwelling District) with an HP (Historical Preservation Overlay District) zoning classification located at 102 NW Fort Sill Boulevard. Exhibits: Ordinance No. 13-\_\_\_, Location Map, Application, HPC Minutes and CPC Minutes.

Rogalski stated this lot is across the street on Arlington and Fort Sill Boulevard and is currently zoned R-4. The request is to rezone to R-2 with an HP overlay. When these neighborhoods were built before zoning existed, the zoning was put on big blocks and on one side of the street it was R-4 and the other was R-2. The Historical Preservation Commission approved this request on November 7, 2012 and the City Planning Commission approved this on December 13, 2012. It was originally built in 1905 with a renovation in 1937.

Wells questioned if this had a carriage house.

Rogalski stated there was a garage apartment when it was originally built. He stated R-2 is the lowest zone that would fit that property because there was an additional living space on the property.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Wells, SECOND by Haywood to adopt **Ordinance 13-02**, waive the reading of the ordinance, read the title only. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Haywood, Wells. NAY: None. ABSTAIN: Moses. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-02

An ordinance changing the zoning classification from the existing classification of R-4 (high density apartment district) to R-2 (two-family dwelling district) with hp (historical preservation overlay district) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; authorizing changes to be made upon the official zoning map in accordance with this ordinance.

14. Hold a public hearing and consider an ordinance changing the zoning from R-2 (Two-Family Dwelling District) to R-1 (Single-Family Dwelling District) with an HP (Historical Preservation Overlay District) zoning classification located at 7 NW Fort Sill Boulevard. Exhibits: Ordinance No. 13-\_\_\_, Location Map, Application, HPC Minutes and CPC Minutes.

Rogalski stated this is on the southeast corner of Fort Sill Boulevard and Arlington. It is currently zoned R-2. The request is to rezone to R-1 with an HP Overlay District. This home was originally built in 1941. The Historical Preservation Commission approved this overlay on November 7, 2012 and on December 13, 2012, the City Planning Commission approved the overlay zone.

PUBLIC HEARING OPENED.

Yvonne Johnson, applicant, stated they look at this area as a historic district with architectural significance. She stated they look at historical preservation as something that is good to do for the Lawton community. For a community to grow and expand it must preserve its history.

PUBLIC HEARING CLOSED.

MOVED by Wells, SECOND by Shoemate to adopt **Ordinance 13-03**, waive the reading of the ordinance, read the title only. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Haywood, Wells. NAY: None. ABSTAIN: Moses. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-03

An ordinance changing the zoning classification from the existing Classification of R-2 (two-family dwelling district) to R-1 (single-family dwelling district) with HP (historical preservation overlay district) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; authorizing changes to be made upon the official zoning map in accordance with this ordinance.

Rogalski thanked the owners of the three properties for their efforts to preserve what are treasures for this community that are privately owned. He stated this was not an easy process and he would like to express his appreciation.

15. Consider directing staff to develop the necessary documents and agreements as necessary to lease approximately 2 acres of abandoned railroad property east of South Railroad Street and south of Southeast D Avenue to City National Bank for development of a parking lot. Exhibits: Location Map.

Rogalski stated City National Bank has inquired about the possibility of leasing approximately 2 acres of the abandoned railroad property that was recently released to the City of Lawton by the Oklahoma Department of Transportation, to use for additional parking for their building at the northwest corner of S Railroad Street and SW E Avenue. There are already three leases located elsewhere on the subject property, most notably is to the Comanche Lumber Company, along South Railroad Street, to the north of SE D Avenue. It has been discussed in a number of circles that the alignment could be used for a bicycle and pedestrian trail from Fort Sill to Lawton's downtown. However, a trail requires only a small portion of this property, which in the downtown area is approximately 300 feet in width. Therefore, prior to formally discussing this lease with City National Bank, staff felt it would be prudent to bring this matter before Council to determine if such a lease would be considered. Following preparation of the necessary documents, this lease would come back to the City Council for final approval.

Wells stated if they lease it they would be leasing it for a fair value price.

Rogalski stated they would have to go through the process of figuring out what the fair value was and the terms. Staff would have to go through a lot of work and they want to know if it is worth the effort.

Mayor Fitch stated they had railroad lease property on their building in Duncan. He stated if staff gets with ODOT, they will have a lot of examples and prices available of what they are currently leasing in other communities.

Burk stated being able to clean this area up would be great otherwise we will have to keep it mowed and taken care of. He recommended they get this process started.

Wells suggested that we try to have City National do anything that needs to be done on the property to make it a parking lot.

Mayor Fitch stated in a typical lease like this the lease holder makes the improvements and if they terminate the lease the improvements stay and nobody is reimbursed.

Burk stated that we will still put all the requirements on them just like we would if someone else was putting in a parking lot.

Rogalski stated yes, in the lease we can require anything we want. He stated the asphalt will be built properly with landscaping.

Wells suggested they find someone to lease the property at A Avenue and Lawrence on the other side of Comanche Lumber. There have been couches sitting on that property and he can't seem to get anyone to get them moved.

Moses stated because of the relationship he has with the bank, he will abstain from voting.

MOVED by Wells, SECOND by Tennis to direct staff to develop the necessary documents and agreements as necessary to lease approximately 2 acres of abandoned railroad property east of South Railroad Street and south of Southeast D Avenue to City National Bank for development of a parking lot. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Haywood, Wells. NAY: None. ABSTAIN: Moses. MOTION CARRIED

16. Consider discussing the concept of group outside fire protection contracts and provide direction to staff on potentially negotiating/developing group outside fire protection contracts between the City of Lawton and groups/associations near the City. Exhibits: None.

Chief Bart Hadley, Lawton Fire Department, stated 10 years ago, the City of Lawton regularly entered into individual outside fire protection contracts with individual homeowners. These contracts guaranteed payment to the City if and when we actually provided fire protection to an individual property owner located outside our city limits. However, approximately ten years ago, the city council questioned the fairness and rationale of entering into these contracts and the practice was stopped. Not entering into the contracts did not seem to have a large affect on any particular homeowner. Those homeowners did not see an initial rise in their insurance premiums at that time because they had Lawton zip codes and they fell under the ISO rating of the Lawton Fire Department. A couple of years ago insurance company software became a little more sophisticated and those homeowners started seeing a dramatic increases in their insurance rates because they were no longer being credited with the Lawton Fire Department response. Recently, he has had discussions with homeowners' associations/groups about the possibility of entering into contracts that provide annual fees, up front, to the City in return for providing fire protection to these areas just outside our city limits. He stated the rolling stock fee generates

about \$1.8 million and with the cost of fire apparatus it is very hard to come up with a fair method of comparing fire apparatus with other equipment. He talked with the City Manager about entering into a group contract with, for example, the Pecan Valley North Homeowners Association. That is where he was getting calls from at the time and they were invited to the association meeting. This would be a fee on an annual basis whether or not they used it or not. Pecan Valley North has about 140 homes, Pecan Valley South has 360 homes and Shelter Lake has 40 homes. This would be a great deal of money for whatever the council deemed necessary, such as rolling stock for the fire department. This may replace a fire truck every few years. He stated staff feels this is a concept worth pursuing. The City Attorney suggested to him that he discuss this proposal with the city council to see if there was any interest prior to investing a lot of staff time developing a contract.

Shoemate questioned how this would affect the volunteer fire departments in that area.

Hadley stated those areas are serviced by Cache Fire Department. Because of the distance, those homeowners get no credit for a fire department. They get the lowest ISO rating. He has spoken to the Cache Fire Chief who supports this concept and it would take a problem area off of his shoulders. We do have a mutual aid agreement with Cache Fire Department, but they have to arrive first and assess if the situation is above their means. We have a fire station just south of Cache Road on NW 82nd Street and it is a reasonable response time for our units to get to those areas.

Moses stated he is very sensitive about these outside contracts and support for people outside the city limits. He stated the indirect cost of running the fire department must be rolled into the cost of providing that service and it can't be on a single, one time basis. The direct cost is whatever it cost us to run a truck out there and back. The indirect costs need to be prorated with that transaction. He does not want to be so callus as to say that we are going to let someone's home burn down. This contract is only a means to an end and the end is to help these folks relieve the financial burden of their increased insurance, but we can't do it on the backs of the Lawton taxpayers by having to pay the toll freight for the fire department and not have that shared by the people who use the service. He does not like this pay on a transaction basis for a service we would provide.

Hadley stated that this would be a group of homes, and as an example, if the homeowners association entered into a contract with the City of Lawton and paid a portion of those savings to the City of Lawton on an annual basis every year for any potential response that they might need in those areas over the coming years.

Tenis questioned if this was the same group that sued us over the water rates.

Wells stated no, that was rural water districts.

Wells stated he is not for this.



Burk stated that more and more things are being built out that way and he questioned if this would put a burden on us. He questioned how many trouble calls were in that area in that past year.

Hadley stated there are a total of 500-600 homes in those three areas combined. Over a year period we had about 54 total calls. We make nearly 10,000 calls a year as a fire department, so it would not have much of an impact. He would not be in favor of entering into contracts with areas that are beyond a reasonable response time. The groups of homes that are out on that side make this an idea worth exploring.

Bellino-Hall questioned if we responded to those 54 calls.

Hadley stated we did respond to a number of those calls, probably less than a dozen, through mutual aid agreements.

Bellino-Hall stated if we developed this contract we would be getting paid, whereas now we get nothing.

Hadley stated that is true. With this contract we would be getting paid even if we never had to respond out there.

Wells stated they will pay a fee up front even if they use us or not.

Mayor Fitch stated you are looking at roughly \$1,000 a dwelling and 500-600 dwellings, that is half million or better a year.

Tenis stated there is an assumption being made that we would get \$1,000 a house.

Mayor Fitch stated it is his understanding that this is an all or nothing deal. It would be billed to the association and not the individuals.

Wells stated they may be willing to pay \$500 if they are saving \$1,000, but they may not be willing to pay the whole \$1,000. They have no idea what the number would be, but it potentially could be several hundred thousand dollars.

Moses stated that would be an issue negotiated by the homeowners association with their members.

Jensen stated they would do the negotiations on behalf of the fire department if council authorizes this, but staff is not prepared to talk about numbers tonight. They have to calculate costs and figure out what they are willing or not willing to pay.

Shoemate questioned how this will affect realty companies. There could be more new homes built outside Lawton.

Burk questioned if we would just provide fire services.

Hadley stated that would be up to council to decide what version we would go with. He believes that Comanche County Memorial has an ambulance in Cache and if available, it would respond to those areas.

Burk stated he would be willing to look into it.

Wells stated he thought it was a great idea and would bring in some extra revenue. The only caution he would have is with the negotiating. We do not want to get involved with the homeowners association deciding if someone is paying their fair share or not. It has to be a group thing so that everyone in that area gets the coverage.

Hadley stated this would have to be a particular area. How they collect would be up to them. We would enter into a contract with the association to provide fire service for that area and all homes in that area would be protected equally.

Haywood questioned if there were fires in Lawton and Pecan Valley, where would we respond.

Hadley stated if only one truck was available at that time it would respond to the emergency in Lawton first.

Wells stated as long as there is a unit available there is going to be a back up assigned for any fire that comes up.

Moses stated this issue is symptomatic of a longer term problem the city will face and as we grow to the east and west. We need to have a regional coordination body that starts addressing these issues so as the density of homes increases and more and more homeowners associations come to us asking for these types of services, we have to have some organized way to deal with these in a consistent fashion to cover our costs and eventually fold some of these communities into the city limits.

MOVED by Burk, SECOND by Wells to give staff the authority to negotiate/develop group outside fire protection contracts between the City of Lawton and groups/associations near the City AYE: Shoemate, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: Tennis. MOTION CARRIED

17. Consider making a determination that the removal of hazardous trees from public rights-of-way meets the criteria for accessing the Emergency Management Stabilization Arrangement Ordinance fund, and approving the recovery of such funds through the nuisance abatement process. Exhibits: Legal Opinion Memorandum No. 12-01 and Notice and Administrative Order letter.

Burk stated he chaired this committee. He stated he does not agree with the recommendation to use the abatement process. He stated there is an emergency fund set up for instances just like this and he feels this fund should be used and it shouldn't depend on your ability to pay to have a tree removed in the right of way in front of your home. He stated there were about 52 trees left

off the list but he would like to see them do all the trees and be finished with this. The committee worked very hard going through these trees. If someone would like to pay for their own tree, we could give them the contact information for the contractor. He believes this is something we should do as a city.

MOVED by Burk, SECOND by Tennis to give the City Manager the authority to remove all the trees and to use up to \$179,550 from the emergency fund.

Wells stated he was on the committee and he does not agree that the emergency fund was set up to pay for tree removal. It was set up with the idea of taking care of another ice storm or something else, not anything the council decides is an emergency. He is not in favor of using the emergency fund. That money came from people's water bills or sales tax monies that was in the budget to be used to fix streets or something else. We had an ice storm a few years ago and we had to go out and spend hundreds of thousands of dollars on overtime to cover that emergency. We asked for reimbursement and we got some from FEMA and state emergency management in the amount of \$1.8 million. Why should citizens pay to have a tree taken down in someone's yard that has a half million dollar home. The abatement process is the only way to do it, it is fair and it goes on the property tax and they have a year to pay for it. It could be a side issue if they want to put together a committee to review those who cannot afford to pay for it.

Moses stated he is hung up on this sliding scale that addresses the homeowner and the amount they would be held liable for based on their income. He feels this is a terrible slippery slope to get on. This addresses income of the individual as opposed to the equity in the home of which the abatement process attaches when there is a charge that can't be paid by the homeowner. Home owning responsibilities incur a lot of liabilities and those have to be met. They cannot absolve people through a sliding scale such as this. He would agree with going through the abatement process.

SUBSTITUTE MOTION by Wells, SECOND by Moses to give the City Manager the authority to remove all the trees and to use up to \$179,550 from the emergency fund, but using the abatement process to recoup what we can.

Long clarified that the \$179,550 will take down the 300 trees.

Burk stated he had a call from a lady on a fixed income with three of the trees in her yard. She can't pay the \$2,100 to start with and now we would tell her it will be a lien on her property. He disagrees with this.

Bellino-Hall stated the time and effort of the city having to go through the abatement process is just going to eat up more money. For \$180,000 we just need to do this because one limb falling on someone could cost us \$125,000 and cause trauma.

Wells stated homeowners insurance should cover any damage like that. It is not the city's responsibility to cover damage on your property.

Tennis stated it is not their property, it is the easement.

Wells stated we tell people that if you build a fence on an easement and we have to tear it down it is your responsibility to put it back up, now we are telling people they can put trees on our easement, but if they die, we will take them down for you.

Burk stated it is not on their personal property. That homeowners insurance is going to sue the city back.

Wells stated the next council will want to use that emergency fund for something else they deem an emergency. Once we go down this path, forget that emergency fund.

Herbert Derricott, 6212 NW Cheyenne Drive, stated the fund is set up for an emergency and the council declared this an emergency. Why should he take care of trees that he did not even plant. He stated everyone contributed to this emergency fund and if the council declares this an emergency, it should be taken out of that fund. If you file it with your insurance, your insurance goes up. He does not want to foot the bill.

Wells stated that easement is your property and you would be required to file it with your personal property insurance.

Mr. Derricott stated he contributed to that emergency fund and it should help him out if the city declares this an emergency.

Long stated they need to understand that right of way is land held in trust for the public use. Just because an area has been designated as a right of way on a plat, that does not mean that you don't enjoy full use of that property, nor are you absolved of responsibility to maintain it.

Haywood stated this should have been broken down so they know how many trees are in each area.

Mayor Fitch stated most of these trees are in the older areas.

Moses stated he read the legal opinion and the ownership and use of that property out to the curb is the adjacent homeowner. It is grounded in state law that this is the case and the statute supports the state law and the abatement process is integrated with the state law. The trees come down in either alternative, it is a question of how it gets paid for. The city is not in the position of being a donor to people who can't afford the homes they own. If you own a home, you have an obligation to meet the requirements of land ownership.

Jensen stated each council member has had their legal opinion for several weeks which states that the property that abuts your home, you own that property out to the middle of the right of way or the alley. Our opinion firmly says that responsibility for the trees belong to the abutting property owner. The liability issue could fall on the city and we have to do one of two things. We either have to make the property owner address the dangerous situation or we have to. The process we use is a policy decision which should be made by the council.

VOTE ON SUBSTITUTE MOTION: AYE: Moses, Wells. NAY: Shoemate, Tennis, Bellino-Hall, Burk, Haywood. MOTION FAILED

VOTE ON ORIGINAL MOTION: AYE: Shoemate, Tennis, Bellino-Hall, Burk, Haywood. NAY: Moses, Wells. MOTION CARRIED

18. Consider an ordinance pertaining to utilities amending Section 22-2-1-218, Division 22-2-1, Article 22-2, Chapter 22, Lawton City Code, 2005, relating to temporary or periodic restrictions on water usage, providing for severability, and declaring an emergency. Exhibits: Ordinance 13-\_\_.

Ihler stated in October of last year, the council passed a water conservation ordinance that changed the way we looked at implementing or triggering points for our water conservation policy. In that you look at the overall available raw water to the citizens that we can treat in comparison to the old way which was adjusting elevations of Lake Lawtonka. Since that time there have been some concerns about some minor revisions to the policy, so the committee looked at some of these concerns. The committee decided to make four changes to the policy. The current policy states they can water between the hours of midnight and 9 a.m., one concern was during the winter time during those hours the leaves and bushes would freeze. The committee recommends that during the months of November 1<sup>st</sup> through February 29<sup>th</sup>, the hours be changed to 11 a.m. to 3 p.m. The second change was under the exemption status, they wanted to allow watering around your foundation utilizing a hose. This would be exempt during all four stages. The third change was to provide relief to the commercial businesses such as car washes and nurseries. Currently the prohibition stage where you cannot do any outside watering occurred at 50%. The committee changed that stage to occur at 40%. Because the committee changed the prohibition stage from 50% to 40%, the fourth change was to incorporate an intermediate stage between the even and odd, every other day watering and the complete prohibition. They incorporated the stage at the 50% now that allows watering on two days a week, which is on Wednesdays and Saturdays only. That is the intermediate stage between stage two and stage four which is now prohibition. He stated one correction that needs to be made to the policy, if approved, is on the last page of the policy on section K which indicates the use of fire plug meters during stages 2 or 3 is prohibited. It needs to say stage, 2, 3 or 4.

Wells stated in stage 3 they also set hours of midnight to 9 a.m. in the summer on Wednesdays and Saturdays only.

COL Hossenlopp stated Fort Sill has already adopted those four proposals and his understanding is the lake level is at 51% right now. They go to proposed stage 3 today. At Fort Sill they are commensurate with what the city is trying to do.

Ihler stated the overall percentage of the three lakes right now is at 51.7%. He stated one of the reasons they are asking that this be adopted as an emergency is that they believe that within the next 30 days they will get below that 50%.

MOVED by Wells, SECOND by Tennis to adopt **Ordinance 13-04**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-04

An ordinance pertaining to utilities amending Section 22-2-1-218 Division 22-2-1, Article 22-2, Chapter 22, Lawton City Code, 2005, relating to temporary or periodic restrictions on water usage, providing for severability, and declaring an emergency.

19. Consider an ordinance pertaining to Municipal Government Organization amending Section 2-1-1-104, Section 2-1-1-105, and Section 2-1-1-107, Division 2-1-1, Article 2-1, Chapter 2, Lawton City Code, 2005, by establishing the filing period and election dates for municipal office, providing for severability, and establishing an effective date. Exhibits: Ordinance 13- \_\_\_\_.

Scott Meadors, Deputy City Attorney, stated in February 2012 we had some amendments to the charter which provided that the primary and general municipal elections in the future would be on the same date as the state. It also called for us to establish that in chapter 2 of city code. This ordinance amends chapter 2 and specifies that the filing period in the future will be the first Monday through Wednesday in April and that the primary and general election dates will be set forth by the city resolution calling the election in conformance with the election calendar established by the Oklahoma State Election Board. We opted for that flexible language primarily because the dates are subject to change, particularly in odd numbered years.

MOVED by Wells, SECOND by Shoemate to adopt **Ordinance 13-05**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-05

An ordinance pertaining to municipal government organization amending Section 2-1-1-104, Section 2-1-1-105, and Section 2-1-1-107, Division 2-1-1, Article 2-1, Chapter 2, Lawton City Code, 2005, by establishing the filing period and election dates for municipal office, providing for severability, and establishing an effective date.

20. Consider an ordinance pertaining to offenses and crimes creating Section 16-6-1-623, Division 16-6-1, Article 16-6, Chapter 16, Lawton City Code, 2005, which prohibits bringing or possessing certain contraband in any place where prisoners are located, providing for severability, codification, and establishing an effective date. Exhibits: Ordinance 13- \_\_\_\_.

Jensen stated this ordinance provides that any form of tobacco product cannot be brought into the city jail or any place where prisoners are located in conformance with state law.

Wells questioned if the jailor would be charged if he has cigarettes in his pocket.

Jensen stated the ordinance says any person without authority.

Wells questioned if a citizen who is just visiting can have a pack in his pocket.

Jensen stated they cannot have that. It would be difficult to figure out who is going to try to pass it and who is not.

MOVED by Wells, SECOND by Tennis to adopt **Ordinance 13-06**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-06

An ordinance pertaining to offenses and crimes creating Section 16-6-1-623, Division 16-6-1, Article 16-6, Chapter 16, Lawton City Code, 2005, which prohibits bringing or possessing certain contraband in any place where prisoners are located, providing for severability, codification, and establishing an effective date.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER .

Wells stated on January 10<sup>th</sup> at 3:15 a.m. there will be a homecoming for members of the 214<sup>th</sup> Fire Support Brigade at Rheinhart Gym. He thanked Chief Hadley for his service with the fire department and welcomed him as the new court clerk.

Moses thanked Chief Hadley for his service.

Bellino-Hall stated she is concerned about opportunities for young people in our city. On December 22<sup>nd</sup> she read in the paper about the pig and lamb show being cancelled by the chamber. She thought this was unconscionable. She stated Robert Spencer picked up the baton and in a weeks time had enough money to run this show. She stated the chamber could have done the same thing.

Long stated because of the significance of the water conservation ordinance, his office will post it on our website tomorrow.

Mayor Fitch stated with regards to the chamber, hotel/motel tax is down over \$150,000 and they have got to evaluate what value this show brings to the city from a revenue standpoint. The costs associated with that show is \$35,000 and it is a regional show with very little hotel utilization.

The Mayor and Council convened in executive session at 8:03 p.m. and reconvened in regular, open session at 9:15 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

21. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the employment of Nathan M. Johnson as Municipal Judge, and in open session take other action as necessary. Exhibits: None.

Mayor Fitch read the title of item 21. He stated we have a tremendous person in this position and we are very proud of what he has accomplished.

MOVED by Wells, SECOND by Shoemate to approve a two year contract with a \$3,000 salary increase. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Moses, Haywood, Wells, Fitch. NAY: None. MOTION CARRIED

22. Pursuant to Section 307B3, B4 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to (1) economic development, including the purchase/transfer of property, incentive proposals, and financing in connection with the Lawton Downtown Redevelopment Project and other development projects under consideration in the City, (2) a pending action with AEP/PSO regarding responsibility for electric utility relocation costs in connection with the Lawton Downtown Redevelopment Project, and take appropriate action in open session as necessary. Exhibits: None.

Jensen read the title of item 22. No action was taken.

There being no further business to consider, the meeting adjourned at 9:18 p.m. upon motion, second and roll call vote.

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FRED L. FITCH, MAYOR

ATTEST:

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TRACI HUSHBECK, CITY CLERK